IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.29 OF 2007
Along with
Civil Application No.1387 of 2006

Ramchandra Aba Dange and anr. .. Appellants.
Vs
Baburao Kondiba Dange, .. Respondent.

Mr P.B.Deo, for the appellants.
Mr Nilesh S Patil h/f Mr Bhushan Kakade, for the respondent.

CORAM : **D.B.BHOSALE,J.**
DATE : 07/02/2007
PC:

1. Heard the learned counsel for the parties.

2. This second appeal is directed against the concurrent findings recorded by the courts below by which the suit filed by the plaintiff for removal of the encroachment has been decreed. It appears that the appellants/defendants encroached upon the land of the plaintiff to the extent of five Ares on the southern side of the suit land and for removal of the encroachment the suit was filed. Both the courts below, after having taken into consideration the entire evidence on record, have recorded a categoric finding that the plaintiff has proved his title and also the encroachment to the extent of five Areas on the southern side of the suit land. Mr Deo, learned counsel for the appellants, submitted that a plea of adverse possession

has not been considered by the courts below at all. He further submitted that as a matter of fact, the defendants have filed an application for amendment of the written statement raising a plea of adverse possession and the said application was rejected and in view thereof the courts below was wrong in holding that there was no plea of adverse possession. It is true that the application for amendment was filed by the appellants raising the plea of adverse possession. It is equally true that after rejection of the application the order was not carried further, nor did the appellants challenge the order in the first appeal. I perused the grounds of appeal filed before the first appellate court which do not make any reference to the plea of adverse possession. In the circumstances, I find no error in the judgments of the courts below. No substantial question of law is either raised or involved in this appeal. Keeping that in view and considering the concurrent findings of facts and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal fails and is dismissed as such. As a consequence thereof, the civil application is disposed of.

(D.B.BHOSALE,J.)